

## REMARKS

The Office Action July 13, 2004 has been received and reviewed. Claims 1-22, 33-40, 43 and 44 are noted as pending in the Office Action. Applicants have canceled claims 15, 16, 43 and 44, and amended claims 4, 5, 7, 9, 10, 12, 14, 17, 18, 22, 34, 36 and 37. Claims 1 through 3 and 38 through 40 are withdrawn from consideration as drawn to the non-elected groups and claims 23 through 32, 41 and 42 were earlier canceled. All amendments and cancellations are made without prejudice or disclaimer. No new matter has been added. Reconsideration of the application as amended herein is respectfully requested.

### Sequence Compliance

Applicants note the requirement for sequence compliance contained in the Office Action and respond as follows. Claim 22 is amended herein to include a SEQ ID number as requested by the Office Action.

With respect to the specification, the Office Action states that a number of SEQ ID numbers are required in the specification, including for drawing FIGS. 5 and 38. A Second Preliminary Amendment, filed May 31, 2002 provided SEQ ID numbers in the specification and deleted former FIG. 5, by way of substitute specification. A search of Office records on the Image File Wrapper on the Patent Application Information Retrieval System, finds the Second Preliminary Amendment, but does not show the Substitute Specification attached thereto as Appendices A and B. A copy of the Second Preliminary Amendment, including the Substitute Specification is attached hereto as Exhibit 1. Applicants respectfully request it be accepted to place the Specification in compliance with the Sequence Rules. No new matter has been added to the substitute specification.

### 35 U.S.C. § 112, First Paragraph, Claim Rejections

Claims 18 through 22 stand rejected in the Office Action as assertedly failing to comply with the written description requirement, under 35 U.S.C. § 112, first paragraph. The Office Action states that the “invention appears to employ the PER.C6 cell line,” and that a deposit of these “biological materials may satisfy the requirements of 35 U.S.C. § 112.”

Submitted with this application is the Declaration of Dr. Ronald Brus, declaring that ECACC deposit number 96022940 was made under the terms of the Budapest Treaty and that all restrictions upon public access to the deposit (except those expressly permitted by 37 C.F.R. § 1.808(b)) will be irrevocably removed upon the grant of a U.S. patent on this application. Additionally, the specification has been amended herein to include the required information on the deposit sufficient to specifically identify it and to permit examination. Accordingly, it is respectfully requested that claims 18-22 be allowed.

Claims 15, 16, 43 and 44 were rejected in the Office Action as assertedly lacking enablement and as assertedly failing to comply with the written description requirement, both under 35 U.S.C. § 112, first paragraph. Although applicants respectfully disagree with these rejections, these claims are canceled without prejudice herein to expedite allowance, rendering these rejections moot.

#### **35 U.S.C. § 112, Second Paragraph, Claim Rejections**

Claims 4 through 22, 33 through 37, 43 and 44 were rejected in the Office Action as assertedly being indefinite, under 35 U.S.C. § 112, second paragraph. Claims 15, 16, 43 and 44 were canceled herein, rendering this rejection moot as to them.

With respect to claim 34, the Office Action asserts it is “vague and indefinite” with respect to the language “derived” and “derivatives thereof” (Office Action at page 8). Claim 34 is amended herein to remove this language, and dependent claims 4, 5, 7, 9, 10, 12, 14, 17, 18, 36 and 37 are amended for consistency. It is respectfully submitted that claim 34 and the claims dependent therefrom are definite, and should be allowed.

With respect to claim 11, the Office Action asserts that it is indefinite with respect to the phrase “more particular” (Office Action at page 9). Claim 11 is amended herein to remove this language. Applicants submit that amended claim 11 is now definite.

#### **Double-Patenting Rejections**

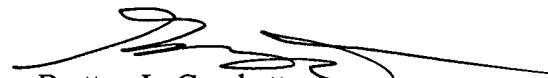
Claims 5 through 14, 34, 36 and 37 were rejected in the Office Action as assertedly unpatentable over claim 1 through 7 of U.S. Patent 6,492,169, under the judicially created doctrine of obviousness-type double-patenting. The Office Action notes that a “timely filed

terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground" (Office Action at page 9). Submitted herewith is a terminal disclaimer over commonly owned U.S. Patent 6,492,169. Applicants respectfully request this rejection thus be withdrawn.

**CONCLUSION**

All pending claims are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Office determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact applicants' undersigned attorney.

Respectfully submitted,



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Date: October 8, 2004  
BLC



**PATENT**  
**5148US**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re Application of:**

Ronald Vogels et al.

**Serial No.:** 10/002,750

**Filed:** November 15, 2001

**For:** COMPLEMENTING CELL LINES

**Examiner:** To be assigned

**Group Art Unit:** To be assigned

**Attorney Docket No.:** 5148US

**NOTICE OF EXPRESS MAILING**

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Person making Deposit: Orlena Howell

**SECOND PRELIMINARY AMENDMENT**

Commissioner for Patents  
Washington, D.C. 20231

Sir:

Prior to examination of the above-referenced patent application on the merits, entry of the amendments as set forth herein is respectfully solicited.

IN THE SPECIFICATION:

Pursuant to 37 C.F.R. §§ 1.121 and 1.125 (as amended to date), please enter the substitute specification in clean form and including paragraph numbers [0001] through [0188] and References and Abstract attached hereto as Appendix A. A marked-up substitute specification to clearly identify amendments to the specification as required by 37 C.F.R. § 1.121(b)(3)(iii) is attached hereto as Appendix B. It is respectfully submitted that the substitute specification does not introduce any new matter into the above-referenced patent application.

Please also insert the enclosed Sequence Listing after page 69 of the substitute specification.

REMARKS

The application has been amended to include a Sequence Listing in conformity with 37 C.F.R. §§ 1.821-1.825. Submitted herewith is the Sequence Listing, a copy of the Sequence Listing in computer readable form, as well as a Statement under 37 C.F.R. §§ 1.821(f) and 1.825. Appendices A and B also include the Sequence Listing. The application also has been amended to include appropriate sequence identifiers throughout the specification.

The application has been further amended to cancel originally filed FIG. 5 as the contents thereof are now presented as SEQ ID NO:44 of the attached Sequence Listing. Accordingly, the figure indicators have been amended throughout the specification to reflect this cancellation.

It is respectfully submitted that no new matter has been added by the amendment. However, if any questions remain after consideration of the instant amendments, the Office is kindly requested to contact applicants' attorney at the address or telephone number given herein.

Respectfully Submitted,



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Date: May 31, 2002

Enclosures: Paper Copy of Sequence Listing

Copy of Sequence Listing in Computer Readable Format (CRF)

Statement Under 37 C.F.R. §§ 1.821(f) and 1.825